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APPLICATION NUMBER	FILED DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/945,667	01/28/98	HORROBIN	D 34237/170943
EXAMINER			
HM12/0818			
JOHN S PRATT KILPATRICK STOCKTON 1100 PEACHTREE STREET SUITE 2800 ALTANTA GA 30309-4530			
HIGEL, F			PAPER NUMBER
1613			11
DATE MAILED:			08/18/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on July 28, 1999
- ☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☐ Claim(s) 27 TO 94 is/are pending in the application.
Of the above, claim(s) 57 TO 92 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 27 TO 56, 93, AND 93 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 10
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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~~None~~ Receipt is acknowledged of the information disclosure statement filed July 26, 1999, which has been entered in the file.

Claims 57 to 92 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 9.

Applicant's election with traverse of Group I (claims 27 to 56) in Paper No. 9 is acknowledged. The traversal is on the ground(s) that contrary to the Examiner's assertion, the relationship between Group I and Group II is not one of intermediate-final product and compounds, compositions - methods of use and also no undue burden on the Examiner has been established. This is not found persuasive because although applicant is correct in that the relationship between Group I and Group II is not intermediate-final product but compounds-method of use, the restriction is still proper if it can be shown that the product as claimed can be used in a materially different process of using that product. The compounds of Group I can be used in materially different process such being used as germicides, viral agents and platelet aggregation inhibitors. Also, since the inventions have different classification, divergent subject matter and the search for either one of the Groups is not required for the other, an undue burden on the Examiner has been established.

The requirement is still deemed proper and is therefore made FINAL.

~~None~~ The requirement for an election of species is withdrawn.

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~~None~~ Claims 27 to 56 are rejected under 35 U.S.C. 112, second paragraph, for failing to properly define the invention. The terms and expressions “a compound comprising,” “the residue of a nutrient drug, or other bioactive compound,” “other dysfunctional acid linking moiety,” “residue,” “nutrient,” “drug,” “other bioactive component,” “cellular, intracellular or form a part of the skin or blood-brain barrier,” “the residue of a drug, vitamin amino acid, antioxidant, or other bioactive compound,” “antioxidant,” “amino acid,” “vitamin,” “or derivatives thereof,” “a residue of a compound selected from,” “amino acids, adenylysuccinate ... insulin sensitizing agent...or bacteriochlorin-based drug,” “or derivative thereof,” and “the residue of...” render the claims indefinite and based on an inadequate or insufficient disclosure by placing no definite limits or boundaries on the claims. Applicants’ arguments are not deemed persuasive. What is the meaning of “residue,” “residues,” “derivative,” and “derivatives?” Applicants do not define these terms anywhere in the specification.

Claims 27 to 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barsky et al or Alsop et al or British Patents 1,493,098 or 1,529,062 or 2,161,477 or European Patents 0,116,114 or JP 57-067,511 or Breusch et al, cited by applicants.

Claims 27 to 33 and 35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British Patent 1,529,062 or European Patents 056,189 or 0,222,155 or 0,393,920, cited by applicant.

Claims 27 to 29, 32, 33, 36-38, 93 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barsky et al or Alsop et al or Goldblatt et al to Klemann et al or British Patents

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1,293,277 or 1,493,098 or 1,529,062 or 1,356,197 or 2,167,477 or European Patents 0,056,189 or 0,161,114 or 0,246,540 or 0,405,873 or JP 57-067,511 or Breush et al, cited by applicants.

The references disclose homologs, isomers or close structural analogs of the claimed compounds. The claimed compounds are so closely related structurally to the claimed compounds as to be structurally obvious therefrom in the absence of any unobvious or unexpected properties especially since one of ordinary skill in the art would expect that compounds so closely related structurally would have the same or essentially the same properties.

Claims 27 to 35 and 39 to 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer or British Patent 1,529,062 or European Patents 0,184,058 or 0,222,155 or 0,246,540 or 0,321,128 or 0,313,920 or 0,405,873, cited by applicants.

The references disclose compounds which are homologs, isomers or close structural analogs of the claimed compounds. The claimed compounds would be obvious from those of the references for the same reasons as those given supra in the rejection on this same grounds of claims over prior art immediately supra.

~~None~~

No claim is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Floyd D. Higel whose telephone number is (703) 308-4530. The examiner can normally be reached on Tuesday to Friday from 8:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached on (703) 308-4532. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7921.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

F. Higel; CV

8/13/99


FLOYD D. HIGEL
PATENT PRIMARY EXAMINER
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